



# STATE OF INDIANA

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January 8, 2010

Ms. Alicia Gallegos  
*South Bend Tribune*  
225 West Colfax Avenue  
South Bend, IN 46626

*Re: Informal Inquiry 09-INF-36; Lakeville Police Department*

Dear Ms. Gallegos:

This is in response to your informal inquiry dated December 2, 2009. I apologize for the delayed response. I took office in September of this year and found a backlog of informal inquiries at that time. I am currently endeavoring to work through the backlog and appreciate your patience in waiting for this opinion.

Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry regarding the Lakeville Police Department ("LPD"). My opinion is based on applicable provisions of the Indiana Access to Public Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*

In your inquiry, you allege that LPD has failed to respond to your November 3, 2009, request for access to records regarding the arrest of Casey Grove, the Lakeville clerk-treasurer and volunteer police officer. You state that you mailed a request to LPD on November 3<sup>rd</sup>, but Town Marshall Bill Boyer informed you that he never received that letter. Thereafter, you sent another request to LPD via facsimile on November 9, 2009. On November 13, 2009, you left a voicemail message for Mr. Boyer inquiring about the status of your requests. As of the date of your inquiry, you had not received a response from LPD.

My office sent a copy of your inquiry to LPD. To date, we have not received a response.

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. Any person has the right to inspect and copy the public records of a public agency during regular business hours unless the public records are exempt from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-

3(a). The LPD is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy LPD's public records during regular business hours unless the records fall within one of the APRA's exceptions to disclosure. I.C. § 5-14-3-3(a).

Under the APRA, an agency's failure to respond to a written request within seven (7) days constitutes a denial of access. I.C. § 5-14-3-9(b). A public agency may deny a request if: (1) the denial is in writing or by facsimile; and (2) the denial includes: (A) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (B) the name and the title or position of the person responsible for the denial. I.C. § 5-14-3-9(c). Here, it appears LPD failed to respond to your written request within seven (7) days. Under the APRA, LPD denied your request. I.C. § 5-14-3-9(b). If LPD failed to deny your request in writing as required by section 9 of the APRA, it is my opinion that LPD violated the procedural requirements of the APRA.

I do not have enough information regarding the records you seek to determine whether or not they would be exempt from disclosure under the APRA. One exception to the APRA that might apply in this situation is the so-called "investigatory records" exception. I.C. § 5-14-3-4(b)(1). The investigatory records exception to the APRA provides that a law enforcement agency has the discretion to disclose or not disclose its investigatory records. An investigatory record is "information compiled in the course of the investigation of a crime." I.C. § 5-14-3-2(h). The investigatory records exception does not apply only to records of ongoing or current investigations. Moreover, it does not apply only to an investigation where a crime was charged or an investigation where it was adjudicated that a crime was indeed committed. Instead, the exception applies to all records compiled during the course of the investigation of a crime, even where a crime was not ultimately charged, and even after an investigation has been completed. The investigatory records exception affords law enforcement agencies broad discretion in withholding such records. *See Opinion of the Public Access Counselor 09-FC-157*. "Generally, a police report or incident report is an investigatory record and as such may be excepted from disclosure pursuant to I.C. § 5-14-3-4(b)(1)." *Id.*

However, certain law enforcement records must be made available for inspection and copying as provided in section 5 of the APRA. I.C. § 5-14-3-4(b)(1). Section 5 provides that certain specified information be made public in three instances: if a person is arrested or summoned for an offense, if a person is received in a jail or lock-up, and where an agency has received a call regarding a suspected crime, accident, or complaint. The latter record is commonly called the daily log. Section 5(c) requires law enforcement agencies to maintain a daily log or record that lists suspected crimes, accidents, or complaints, and the following information shall be made available for inspection and copying:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency;

(2) The time and nature of the agency's response to all complaints or requests for assistance;

(3) If the incident involves an alleged crime or infraction: (A) the time, date, and location of the occurrence, (B) the name and age of any victim, unless the victim is a victim of a crime under Indiana Code 35-42-4, (C) the factual circumstances surrounding the incident; and (D) a general description of any injuries, property, or weapons involved.

The information required in this subsection shall be made available for inspection and copying in compliance with this chapter. The record containing the information must be created not later than twenty-four (24) hours after the suspected crime, accident, or complaint has been reported to the agency.

I.C. § 5-14-3-5(c). Previous public access counselors have noted that the denial of a request for information required to be maintained in the daily log violates the APRA. *See Opinion of the Public Access Counselor 06-FC-123*. Moreover, any continuing denial of access to this type record is actionable under I.C. § 5-14-3-9(e). *Id.*

I note that the daily log is not required to contain the name or identification of a suspect. Once a person is arrested or summoned for an offense, however, the information specified in Ind. Code § 5-14-3-5(a) should be made available.

I encourage LPD to either produce the requested and non-confidential records to you or issue you a denial that complies with the requirements of the APRA. If LPD fails to comply, I leave you to your remedies provided by Section 9(e) of the APRA.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,



Andrew J. Kossack  
Public Access Counselor

cc: Chief Bill Boyer, Lakeville Police Department